

**REMARKS**

**Summary Of The Office Action & Formalities**

**Status of Claims**

Claims 1-19 are all the claims pending in the application. By this Amendment, Applicants are amending claims 1, 8, and 17-19, and adding new claims 20-24. No new matter is added.

**Additional Fees**

Submitted herewith is a Petition for Extension of Time with fee and an Excess Claim Fee Payment Letter with fee.

**Claim to Foreign Priority**

Applicant thanks the Examiner for acknowledging the claim to foreign priority and for confirming that the certified copy of the priority document was received.

**Information Disclosure Statement**

Applicant also thanks the Examiner for initialing the references listed on form PTO/SB/08 submitted with the Information Disclosure Statement filed on January 12, 2006.

**Claim Objections**

Claim 1 is objected to at page 2 of the Office Action because of the following informalities: the Examiner believes that the word "characterised" appears to be the misspelling of the word characterized.

Applicant is amending the claim to address this objection.

**Claim Rejections - § 112**

Claims 1-19 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term “part” in claim 1, 8, 17 and 19 is a relative term which renders the claim indefinite. The term “one part” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Office Action at page 4.

Applicants are amending the claims to address this rejection.

**Art Rejections**

1. Claims 1-19 are rejected on the ground of nonstatutory double patenting over claims 1-15 of US 7,275,660.
2. Claims 1-19 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-40 of copending Application No. 10/564,748.
3. Claims 1-19 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-19 of copending Application No. 10/542,507.
4. Claims 1, 8, 15, 18 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ouyang et al. (US 2004/0149773).
5. Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Horlin (WO 01/37909 A1) in view of Fairbairn (GB 1,336,014).

Applicant respectfully traverses.

**Double Patenting**

***1. Claims 1-19 In View Of Claims 1-15 Of US 7,275,660.***

In rejecting claims 1-19 in view of claims 1-15 of US 7,275,660, the grounds of rejection state:

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Office Action at pages 2-3.

Regarding independent claim 1, the '660 Patent does not claim and does not disclose at least "wherein said dose indicator includes adaptation means (134) located between said transmission element (34) and said moving part (54) of said dispensing device (B), said adaptation means (134) being movable and/or deformable in order to accurately predetermine, during assembly of the dispensing device (B), the distance at rest between said transmission element (34) and said moving part (54) of dispensing device (B)."

None of the '660 Patent claims recite such features. Further, referring to Figure 1 of the '660 Patent, there is nothing located between the transmission element 17 and the fixing ring 18 of the dispenser device. As such, the claimed features of the current application are not fully disclosed and are not claimed in the '660 Patent.

Since claims 2-19 depend from independent claim 1, Applicants respectfully request that the Examiner withdraw the double patenting rejection of these claims under the '660 Patent.

**2. Claims 1-19 In View Of Claims 1-40 Of Copending Application No. 10/564,748.**

Applicants are deferring to address these provisional rejections until a patent issues from the co-pending application.

**3. Claims 1-19 In View Of Claims 1-19 Of Copending Application No. 10/542,507.**

Applicants are deferring to address these provisional rejections until a patent issues from the co-pending application.

**Claim Rejections - 35 U.S.C. § 102**

**4. Claims 1, 8, 15, 18 And 19 In View Of Ouyang et al. (US 2004/0149772).<sup>2</sup>**

In rejecting claims 1, 8, 15, 18 and 19 in view of Ouyang et al. (US 2004/0149772), the grounds of rejection state:

In re claim 1, Ouyang et al. with reference to figures 1 & 2 below discloses a dose indicator for a fluid product dispensing device (1), including at least one rotary counting means (142) capable of being rotated, said at least one counting means including indicating means (141), showing the number of doses dispensed or remaining to be dispensed, said at least one counting means being actuated by an actuating member (143) which itself is actuated by a transmission element (144) suitable to cooperate with a part (149) of said dispensing device (1) at each actuation of the latter, characterized in that said dose indicator includes adaptation means (160 & 159) located between said transmission element (144) and said part (149) of said dispensing device (1), said adaptation means (160 & 159) being movable and/or deformable in order to accurately predetermine, during assembly of the dispensing device (1), the distance at rest between said transmission element (144) and said part (149) of dispensing device (1).

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<sup>2</sup> The Examiner indicates in the Office action that claims 1, 8, 15, 18, and 19 are rejected under Ouyang et al. (US 2004/0149773). The reference numerals used in the Examiner's rejection, however, appear to correspond with Ouyang et al. (US 2004/0149772). However, neither document renders the claims unpatentable.

In re claim 8, Ouyang et al. discloses wherein said transmission element (144) is a shoulder attached to a flexible tab (154), and cooperating with a part (149) of the fluid product dispensing device (1) which is movable during its actuation.

In re claim 15, Ouyang et al. discloses wherein said indication means (147) are number and/or symbols.

In re claim 18, Ouyang et al. discloses fluid product dispensing device (1) that includes a product reservoir (21) and a dispensing member (22) such as a pump or valve mounted on said reservoir (21), characterized in that it includes a dose indicator.

In re claim 19, Ouyang et al. discloses wherein the dose indicator is actuated by a part (149) of the dispensing device (1) which is moved during actuation of device (1) and which cooperates with a transmission element (144) of said indicator (142).

Office Action at pages 5-6.

Neither Ouyang '772 nor Ouyang '773 disclose at least "adaptation means located between said transmission element and said moving part of said dispensing device, said adaptation means being movable and/or deformable in order to accurately predetermine, during assembly of the dispensing device, the distance at rest between said transmission element (34) and said moving part of dispensing device."

The Examiner identifies element 144 of Ouyang '772 as being a transmission element. Element 144, however, is not a transmission element since it does not cooperate with a moving part of the dispensing device. Rather, the drum 144 of Ouyang '772 cooperates with the first wheel 141 and the second wheel 142 through the lower arms 159 and the upper arms 160.

In both Ouyang '772 and Ouyang '773, the only part of the counter that cooperates with a movable part of the dispenser is the helix-like coil 143, 243, the movable part in Ouyang being the canister or the cap. (*See* Ouyang '772, page 2, ¶ [0028]; Ouyang '773, page 2, ¶ [0026]). There is nothing disposed between the helical coil 143, 243, in either Ouyang reference. As

such, Ouyang does not disclose adaptation means located between the transmission element and a moving part of the dispensing device.

Furthermore, there is nothing in either Ouyang reference that is movable and/or deformable that provides for accurately predetermining, during assembly of the dispensing device, the distance at rest between the movable part of the dispenser and the transmission element. In contrast, in the two Ouyang references, the helix-coil only cooperates with the movable part of the dispenser when the dispenser is actuated and not during the assembly of the dispenser.

As such, Applicants respectfully submit that neither the Ouyang '772 nor the Ouyang '773 reference disclose all of the features of independent claim 1. Claims 8, 15, 18, and 19 are allowable at least by virtue of their dependency from independent claim 1.

**Claim Rejections - 35 U.S.C. § 103**

***5. Claims 1-19 Over Horlin (WO 01/37909 A1) In View Of Fairbairn (GB 1,336,014).***

In rejecting claims 1-19 over Horlin (WO 01/37909 A1) in view of Fairbairn (GB 1,336,014), the grounds of rejection state:

Horlin discloses an inhaler cartridge (4) that dispenses by pressing downwardly inside a holder channel (3) in order to trigger the dispensation (see figure 7) through passage (6), with a counter mechanism (2) with a cap (7) with a viewing window (10) to view a spiral set of number (21) to assist the user in knowing how many doses are used or left, the pin (32) is actuated when the inhaler cartridge (4) is pressed downwardly into the holder channel (3), the pin (32) flexes a tab (33) that flexes before the actuation of the inhaler cartridge (4), which in turn changes the viewed number (see figure 3a) with the use of the second relatively stiff flexible tabs (25 - 26) that actuate after the rotary wheel has commenced rotating, the control wheel prevented from over actuating by a key slot (34 - 35), which will only allow the control wheel to actuate a certain distance, the control wheel prevented from rotating in the wrong direction by the end tabs (30 - 31), the entire counting

device (2) integrated and assembled as one piece (7 - 9) (see figure 5).

However, Horlin fails to disclose the counting wheel displaceable in rotation, a slide member that is displaceable in translation, to allow the counting wheel to display rows and columns of numbers by translating the slide member at least every so often, the slide member having a projection that cooperates with a channel in the counting wheel to track, drive and translate the slide member appropriately, the channel being preferably spiral shaped, slide member and counting one integrated piece.

Although, Fairbairn with reference to figures 1 - 3 teaches a slide member (8) that is integrated with a counting wheel (4), the slide member having a viewing window (12) that shows the various rows and columns of numbers on the counting wheel at the appropriate intervals of actuation, the slide member's viewing window moving by the engagements and movement of the spiral channel (7) on the counting wheel that interacts with the tooth (9) from the slide member (8). Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to implement Fairbairn's teaching into Horlin's because Fairbairn teaches a way to utilize the entire counting wheel and not just its outer rim for counting dosages, which can ultimately lead to a smaller counter, which is advantageous in a variety of applications.

Office Action at pages 7-8.

Regarding independent claim 1, neither Horlin nor Fairbairn disclose at least "wherein said dose indicator includes adaptation means (134) located between said transmission element (34) and said moving part (54) of said dispensing device (B), said adaptation means (134) being movable and/or deformable in order to accurately predetermine, during assembly of the dispensing device (B), the distance at rest between said transmission element (34) and said moving part (54) of dispensing device (B)." As such, even if one were to combine Fairbairn with Horlin, this would not produce all of the recited features of independent claim 1.

Horlin discloses a counter located outside the dispenser's housing, with a control wheel having a pin (32) entering in said housing and co-operating with the movable container during

actuation. The axial movement of the container presses the pin (32) downwards, which results in the rotation of the control wheel, and thus actuation of the counter. (See Horlin, page 13, lines 6-9 and 16-18). Horlin does not disclose adaptation means provided between the movable container and the pin (32). As such, nothing in the device disclosed in Horlin accurately predetermines the distance between the movable part of the dispensing device and the transmission element during assembly of the dispensing device.

Fairbairn does not disclose a fluid product dispensing device. As such, there can be no adaptation means disposed between the transmission element and a fluid product dispensing device.

In view of the above, Applicants respectfully submit that independent claim 1 is allowable over the cited prior art. Claims 2-19 are allowable at least by virtue of their dependency from independent claim 1.

#### **New Claims**

For additional claim coverage merited by the scope of the invention, Applicant is adding new claims 20-24.

Independent claim 20 is allowable because the cited prior art does not disclose at least, “wherein the adaptation means are for adjusting a distance between the movable part and the transmission element during assembly of the fluid product dispensing device to compensate for manufacturing tolerances of the movable part and the transmission element.”

Independent claim 21 is allowable because the cited prior art does not disclose at least, “an adjustable peg attached to the transmission element.”

Claim 22 is allowable at least by virtue of its dependency from independent claim 1.



Claims 23 and 24 are allowable at least by virtue of their respective dependencies from independent claims 20 and 21.

**Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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